

August 3. 1765.

D E F E N C E S

F O R

KATHARINE NAIRNE, Widow of the deceased THOMAS OGILVIE of EASTMILN, now prisoner in the tolbooth of Edinburgh:

N^o 8.

In the Criminal Indictment pursued against her at the instance of his Majesty's Advocate.

IN 1764, the now deceased Thomas Ogilvie of Eastmiln, a gentleman rather advanced in years, of a tender constitution, and possessed of a very small fortune, made his addresses to this unfortunate pannel, (then scarce nineteen years of age), in proposals of marriage: which, contrary to the opinion of her friends, by reason of the smallness of his fortune, she accepted of from principles of pure love and affection: and the marriage being accordingly celebrated in the beginning of January last 1765, was dissolved, by Mr Ogilvie's death, upon the 6th of June last; when the affections she had conceived for her husband can scarce be supposed to have had time to cool or subside.

Notwithstanding of which, it is her now very singular misfortune to be indicted and accused, at the instance of his Majesty's advocate, upon the information of Alexander Ogilvie, her husband's youngest brother, as guilty of two of the most enormous crimes known in the law: 1st, The crime of incest, which she is charged to have committed with Lieutenant

A

Patrick

Patrick Ogilvie, her husband's immediate younger brother;
2dly, The crime of murder, committed upon the person of
 her said husband, by poison administered to him.

Her parentage, education, age, sex, character, and behaviour, in that stage of life previous to her marriage, when female passions are most powerful and predominant, which she flatters herself will be attested by persons of the greatest honour and probity, render it highly incredible, that any person, not hardened and inured to every species of wickedness, lost and abandoned to every principle of virtue, should at once plunge into crimes of so deep a dye.

Conscious of her innocence, she wishes for nothing more ardently than a fair and impartial trial, as the only means of reparation that can be made to her injured character, so much traduced; and which, in the event, she is hopeful, will appear to be the result of the most inveterate rancour, hatred, and deadly malice, conceived against her by one of her own sex, a person of most flagitious life, and abandoned character; and who, she is now told, is the principal evidence meant to be used against her.

Since her imprisonment, no endeavours have been spared to impress the public with sentiments of her guilt, by publication of many false, malicious, and wicked reports, industriously propagated to the prejudice of her general character.

But she rejoices in the appeal she will soon be able to make to the world, to her judges and jury, to vindicate her from the charge of those horrid crimes with which she stands now arraigned. At the same time, as she cannot know what false evidence may be produced against her, self-preservation requires, that she should not pass over any material objection to the form of this indictment.

And, in that view, she objects to that article of the indictment which charges the crime of incest, said to have been committed *in one or other of the rooms of the house of Eastmiln, and out-houses adjacent thereto, at different times, in January, February, March, April, May, and June, all last past, and before the*

12th day of that last month; that is, in other words, from the day of her marriage till the sixth day after her husband's death.

She takes no exception to the generality of the places charged where this crime should have been committed, viz. "in one or other of the rooms of the house of Eastmiln, and out-houses adjacent thereto;" though she is advised, that after so full a precognition as she is told has been taken, by examination upon oath of every person that could be supposed to have the least knowledge in these matters, at which none were allowed to be present upon her part, the places where this supposed crime is said to have been so frequently repeated should have been specially condescended upon, and described. But she is advised, and humbly submits it to the consideration of her honourable judges, and the impartial world, that a most unbecoming and improper latitude has been taken, in charging the time of the commission of this supposed offence, comprehending the whole space, every hour, day, week, and month, from the period of her marriage, to her husband's death, and even while he was lying a corpse, before his interment on the 12th of June.

The disadvantages to which she must necessarily be exposed, in making her defences against so general a charge, are too obvious to need illustration; and therefore she does humbly insist, that this branch of the indictment cannot be sustained, or admitted to proof.

But if, contrary to expectation, the same shall be sustained, she proposes, by undeniable evidence, to traverse and redargue every material circumstance charged in the indictment, as well with regard to this as the other crime with which she is accused; and, without departing from any other defences which may occur to her counsel, the great lines of those facts which she proposes to prove will be these following.

1st, That she accepted of Mr Ogilvie for her husband, contrary to the opinion of her friends, out of pure love and affection:

tion : That Mr Ogilvie, before his marriage, was, and continued thereafter, so long as he lived, to be of a tender constitution : That he had repeated and violent attacks of internal disorders, colic-pains, convulsions in his bowels, &c. in so much that he was not only looked upon to be in a dangerous way, but having had some violent attacks recently before his actual death, gave himself up for lost ; and both the day and the night before he actually died, had such violent returns of these disorders, that he thought himself dying, and resolved to have sent for a physician at many miles distance.

2^d, That the pannel herself, soon after her marriage, did likewise fall into a bad state of health, costive in her body, and restless in the night, which obliged her frequently to take small doses of salts and laudanum.

3^d, That Lieutenant Patrick Ogilvie, her husband's younger brother, the supposed associate in the crimes charged, having returned from the East Indies, broken and shattered in his constitution, much about the time of the pannel's marriage, came to pay his first visit to his brother, and for some time had his principal residence in his brother's house ; whereby, and by means of his near relation, he distinguished a becoming friendship and intimacy with the pannel, his sister-in-law.

4th, That the pannel having inadvertently allowed herself to run short of the salts and laudanum she used to take, and having occasionally mentioned this in the hearing of Lieutenant Ogilvie, he told her, that as these were medicines which he himself had been advised to use, he had brought home, in his chest, a small quantity of laudanum, and a parcel of salts, of the very best quality ; and that, if she pleased, he would send her a small phial of the laudanum, and a few doses of the salts, how soon his chest, in which they were, should arrive from Dundee. She accepted of the offer ; and did accordingly, some time after, receive from him, by the hands of Andrew Stewart, brother-in-law to Eastmiln, who came to Eastmiln on an occasional visit, a small phial of laudanum, and two doses of salts ; and which are supposed

fed to be the particulars alluded to in this indictment, as the doses of poison said to be secretly conveyed to the pannel.

5th, That Alexander Ogilvie, the younger brother of her husband, had, about the beginning of this year 1765, intermarried with a woman of the lowest rank, the daughter of a common porter in Edinburgh, which gave great offence to his two brothers; and the pannel does not doubt, but she might, upon occasion thereof, have expressed her sense and feeling of the reproach thereby brought upon their family. Of which the said Alexander Ogilvie having got intelligence, this, joined with the disappointment in the expectation he had conceived of the succession to his brother's estate, he from thenceforward entertained a most groundless resentment against the pannel, the innocent cause of that disappointment; and took every occasion to publish the most scandalous falsehoods, calculated to create a misunderstanding between her and her husband.

6th, That for some time before the said Alexander Ogilvie's marriage, he had cohabited, in a most unbecoming manner, with Anne Clark, a cousin-german of the family: a woman of the most infamous character; and who, for a course of years, had lived as a common servant-maid, in one of the most notorious stews or lewd houses in Edinburgh, and other houses of bad fame, till at length she took up her residence with the said Alexander Ogilvie.

7th, Anne Clark's relation to Mr Ogilvie's family furnished Alexander Ogilvie with a pretence of sending her over to East-miln, to pass some weeks there, and to endeavour, by every possible means, to bring about a reconciliation between Mr Ogilvie and his brother Alexander. In this view, she attached herself at first to the pannel, thinking by her means to have some influence with Mr Ogilvie himself; till at length, finding they were both equally averse to have any further correspondence, either with Alexander or his wife, she fell to work in another way; quarrelled with the pannel; made her court to Mr Ogilvie; and, first by dark insinuations, thereafter more explicitly,

citly, endeavoured to instill into Mr Ogilvie's mind suspicions of the pannel's virtue, and of a criminal intimacy between his brother the Lieutenant and her; and that they had even gone the length to form a scheme to deprive him of his life, by poison or otherwise; and these her pretended suspicions she communicated to the good old lady Mr Ogilvie's mother: the tendency of all which was, to operate a misunderstanding and separation betwixt Mr Ogilvie and the pannel.

8th, This diabolical contrivance happened unluckily, in point of time, to coincide with some differences that had arisen between Mr Ogilvie, and his brother the Lieutenant, in settling accounts about money-matters; which having at length produced high words, and put both brothers in a passion, Lieutenant Ogilvie declared he would stay no longer in a house where he had been so used; and was preparing to leave it directly, when Mr Ogilvie, giving way to his passion, gave the parting blow, by acquainting the Lieutenant of the information he had received of his familiarity with the pannel, his sister-in-law; by which Lieutenant Ogilvie justly enraged, having peremptorily insisted to know his author, Anne Clark came at last to be suspected as the author and propagator of this wicked and malicious story; and what afterwards happened, too fully justified the suspicion.

9th, Lieutenant Ogilvie immediately left the house. Mr Ogilvie soon cooled, and became sensible of the folly of his proceedings, and of the injury he had done, both to his wife and brother; as so abrupt a separation could not fail to put them in the mouth of the world. He therefore wrote to his brother the Lieutenant, pressing him most anxiously to return to the family: the pannel, as far as decency would permit, joined in the same request.

10th, At this unlucky period was Mr Ogilvie seized with a return of one of those violent disorders in his bowels and stomach. He had been almost dead the day before; he relapsed at night, complained much, thought himself a dying, continued ill all night; finding himself easier, arose in the morning as usual;

sual; again turning bad, returned to bed, where he took a bowl of warm tea and biscuit; after which he made another effort, got up, put on his cloaths, went abroad to take the air, relapsed, fell a vomiting, threw up a deal of bile, and expired about twelve that night.

11th, The pannel's behaviour upon that melancholy occasion was decent and becoming, expressive of the real sorrow and grief she felt. The tale that is told of her having administered the poison in a bowl of tea that morning, will be disproved in the strongest manner. She had none to administer; and every circumstance, as it is expected to come out on proof, will shew, that she had it not in her power so to have done, had she intended it; and that *de facto* none was administered.

12th, Mr Ogilvie's corpse remained uninterred until the 11th. It was viewed by physicians and surgeons of character and skill: the appearances were nothing but what is usual in natural distempers proceeding from various internal causes. A dissection of the body would easily have shewn whether there had been poison in the case or not; and it was the duty of Alexander Ogilvie the informer, who had come to the house, and stopped interment for one day upon this very suspicion, to have caused the body to be laid open. This was not done; whereby the infallible means were lost of detecting the crime, if any was committed, and this unhappy pannel was deprived of the only infallible means of proving her innocence.

These are the great lines of principal facts which the pannel proposes to prove: many others to the same tendency, will, it is expected, come out in leading the proof; and, she flatters herself, that these, with an intelligent jury, will be effectual to detect the falsehood of this accusation, and to vindicate the character and innocence of an unfortunate young woman, whose present state, several months gone with child, renders
her

her a very improper object to undergo a trial of this nature; which, from the accumulation of two capital crimes in one indictment, and the great number of witnesses given out in list, besides those to be adduced for her exculpation, must draw out to an immoderate length.

In respect whereof, &c.

ALEX. LOCKHART.

HENRY DUNDAS.